Mohamed Said bin Ali & Ors v Ka Wah Bank

HIGH COURT (SINGAPORE) - ORIGINATING SUMMONS NO 914 OF 1988
GRIMBERG JC
23 JUNE 1989

Civil Procedure - Interim injunction - Serious question to be tried - Whether mortgagee's failure to give notice of eviction order ipso facto entitled mortgagor's tenants to injunction - Whether full and frank disclosure required - Effect of failure to do so - Failure due to solicitor

Land Law - Mortgage - Possession order by mortgagee - Eviction order against tenants of mortgagor - Whether occupants of mortgaged premises should be given notice of possessory order by mortgagee - Rent control - Whether occupants entitled to protection of Control of Rent Act

The owners ('the mortgagors') of a building ('the building') mortgaged it to the defendant, a bank incorporated in Hong Kong, in consideration of loans advanced to them. On their default, the defendant obtained judgment for the amount claimed and for delivery of possession of the premises against them. A writ of possession was obtained by the defendant and served on the first plaintiff (who together with the other plaintiffs claimed to be lawful tenants of the building). After some negotiation, the defendant confirmed that the execution of their writ of possession would be delayed. For two years, nothing further was done. Then the defendant obtained a second writ of possession and the sheriff served this on the premises of the building.

The plaintiffs' solicitors issued the present originating summons on the day on which the plaintiffs were to be evicted, claiming, inter alia, declarations that the plaintiffs were the lawful tenants of the building and that the previous orders for possession were not binding on them. At the same time, the plaintiffs applied for an injunction restraining the defendant from carrying out the eviction of the occupants of the building. The supporting affidavit made no reference to the fact that the plaintiffs had no notice of the mortgage action brought by the defendant against the mortgagors and they had no opportunity to attend, and, if thought fit, apply to be joined as defendants prior to the order for possession being made. The injunction sought was granted. The two motions presently before the court sought the continuation of the injunction (by the plaintiffs) and the discharge of the injunction (by the defendant). The issues before the court were whether the plaintiffs ought to have been given notice of the mortgage action in order to consider applying to be joined as defendants, whether this failure to give notice should ipso facto entitle the plaintiffs to a continuation of the injunction; alternatively, whether the injunction should be continued on the grounds that the plaintiffs claimed the protection of the Control of Rent Act ('the Act'). The defendant claimed that the injunction should be discharged because the plaintiffs' affidavit in support of their application failed to make full and frank disclosure, and the plaintiffs were guilty of unreasonable delay in applying for the injunction.

Held, continuing part of the injunction:

(1) Order 83 of the Rules of the Supreme Court ('RSC') requires that the mortgagee claiming possession of the mortgaged property must give particulars of every person in possession of the mortgaged property. The affidavit of the legal officer of the defendant to the effect that there were no persons residing in the building was wrong. No proper inquiry was made by the defendant or their solicitors in Singapore.

(2) A mortgagee plaintiff in a mortgage action, in order to give due efficacy to O 83 r 3(4) of the RSC, should make due inquiry concerning the occupancy of the mortgaged premises. If there are occupants, they must be given notice if a mortgage action is commenced. If they are identifiable, the notice should be addressed and delivered to them; if not, the notice should be affixed to the building.

(3) The note to O 88 r 2-7/3 of the UK RSC provided guidance. The fact that notice had been given should be brought to the attention of the court in an affidavit filed in support of a mortgagee's possessory claim. This would enable a court to determine whether a possessory order should be enforceable against the occupants of the mortgaged property. An occupier ought not to be affected by an order for possession unless he had notice of it and an opportunity of being heard. The first issue was thus answered in the affirmative.

(4) The plaintiffs' argument that since they were not given notice the injunction should be continued without regard to the merits of the plaintiffs' claim that they were protected by the Act was not acceptable. A plaintiff who claims interim injunctive relief must establish at the interim stage that there is a serious issue to be tried.

(5) Until recently, the courts took an uncompromising view that the failure to make full and frank disclosure, even if innocent, would lead to a discharge of an interim injunction. While continuing to uphold the importance of full and frank disclosure, a somewhat more indulgent view has been taken by the courts of a failure to make such disclosure. The court was now willing to exercise their discretion in deciding whether or not to discharge the injunction.

(6) The plaintiffs were guilty of a failure to make full and frank disclosure in that they had not disclosed that at the time of the issue of the first writ of possession, they were represented by solicitors and that representations had been made on their behalf by their Member of Parliament to the defendant.

(7) The plaintiffs were poorly off and their affidavit was hurriedly drawn up by a junior solicitor. The court would not in every case of an application to continue or discharge an interim injunction consider the quality of legal service received by the plaintiffs. But in the present case, the court was entitled to take into account the circumstance surrounding the preparation of the plaintiffs' affidavit.

(8) To the allegation that the plaintiffs were guilty of unreasonable delay in applying for an injunction, the facts showed that this was not true.

(9) Unrebutted documentary evidence established that the first plaintiff's father lived in the building before the war, and that rent was paid to a Muslim landlord up to 1972 and then to another landlord and finally to the mortgagors. These facts render the issue as to the right of the first plaintiff to the protection of the Act a serious question to be tried.

(10) The other plaintiffs did not state that there was any relationship between themselves and the first plaintiff's father or the first plaintiff himself. Neither did the name of the other plaintiffs appear in any document relating to the building. Accordingly, they have failed to raise a serious question as to whether they are entitled to the protection of the Act.

(11) The injunction against the eviction of the first plaintiff, his spouse(s) and children was therefore continued while the

injunction against the eviction of the other plaintiffs was discharged from 1 October 1989, in order for them and their families to obtain alternative accommodation. There would be no order for an inquiry as to damages against the other plaintiffs and no order for costs against them. Costs as between the first plaintiff and the defendant were to be in the cause.

[*Editorial Note*: The defendant has appealed to the Court of Appeal vide Civil Appeal No 65 of 1989.]

Cases referred to

1 *Tan Joo Eng* v *Siang Heng Co Ltd & Ors* [1957] MLJ 18 (folld)
2 *Bank Mellat* v *Nikpour* (1985) FSR 87 (not folld)
3 *Siporex Trade SA* v *Comdel Commodities Ltd* [1986] 2 Lloyd's Rep 428 (not folld)
4 *Eastglen International Corp* v *Monpare SA* (1987) 137 NLJ 56 (folld)
5 *Lloyds Bowmaker Ltd* v *Britannia Arrow Holdings PLC* [1988] 3 All ER 178 (folld)
6 *Brink's-MAT Ltd* v *Elcombe & Ors* [1988] 3 All ER 188 (folld)
7 *Dormeuil Freres SA & Anor* v *Nicolian International (Textiles) Ltd* [1988] 3 All ER 197 (folld)

Legislation referred to

Control of Rent Act (Cap 58, 1985 Ed)
Rules of the Supreme Court O 83 r 3(4)
Rules of the Supreme Court [UK] O 88 r 2-7/3 (note)

Ruth Rajasingam (Miss) for the plaintiffs.
Lee Chin Seon for the defendant.

Cur Adv Vult

Grimberg JC: The plaintiffs in these proceedings say that they are the lawful tenants of no 75 Rowell Road, Singapore ('the premises'), and they claim the protection of the Control of Rent Act ('the Act'). The defendant is a bank incorporated in Hong Kong ('the bank'), to which the premises were mortgaged by three companies in the Ngo Hock Group ('Ngo Hock') under a mortgage dated 2 October 1982 in consideration of loans advanced by the bank to Ngo Hock. Ngo Hock having defaulted, the bank on 4 October 1985 issued an originating summons ('the mortgage action') against Ngo Hock claiming the principal and interest due, and 'delivery by the defendants to the plaintiffs or the plaintiffs' authorized representatives of possession of the said mortgaged property'. Ngo Hock failed to enter an appearance to the mortgage action, and the bank obtained judgment in default on 12 November 1985 for the amount claimed, and for delivery of possession of the premises by Ngo Hock to the bank or its authorized representatives. On 12 December 1985 the bank applied for the issue of a writ of possession. The praecipe for the writ, which was addressed to the registrar, said:

> Please issue a writ of possession against Ngo Hock Investment Pte Ltd ... to deliver possession of no 75 Rowell Road, Singapore, under the order of court herein dated November 1985.

A writ of possession was issued on 12 December 1985 and was served by the sheriff on Mohamed Said bin Ali, the first plaintiff. It is safe to assume that he was served on the premises. The first plaintiff went to see his Member of Parliament, who wrote to the bank's solicitors on 27 March 1986 saying that there were 17 persons living on the premises, all members of a family, and that the family had been in occupation since before the war. He asked the bank to give the occupants 'a longer grace period' in which to move out.

In the month that followed, all four plaintiffs consulted solicitors, who wrote to the bank's solicitors on 21 April 1986, stating that their clients claimed the protection of the Act. They asked for confirmation that the writ of possession would not be executed against their clients, and stated that in the absence of such assurance, they had instructions 'to apply to the court immediately for relief against the writ of possession ...'. The bank's solicitors responded, stating that they would investigate the plaintiffs' claim to protection, and confirming that execution of the writ of possession would not be carried out pending the result of those inquiries. There matters appear to have rested for some two years. However, on 25 May 1988, the bank's solicitors wrote to the plaintiffs stating that the bank did not recognize them as tenants, and requesting them to surrender possession by 6 June 1988. The plaintiffs did not surrender possession, as required of them, and correspondence ensued between their solicitors and the bank's solicitors. In the event, a second writ of possession was issued on 13 August 1988, on the application of the bank's solicitors, since they took the view that the first writ, having been issued some 32 months earlier, might no longer be valid. On 1 September 1988, the sheriff delivered a notice to the premises in the following terms:

> To: The defendants(s)
> and all occupiers of the premises
> No 75 Rowell Road
> Singapore
>
> Writ of Possession No 248 of 1988
>
> Pursuant to this writ of possession, eviction will be carried out on Thursday, 15 September 1988.
>
> In the event of the premises being found locked, forced entry will be effected on the date of eviction.

The plaintiffs' solicitors issued the present originating summons on 15 September 1988, the day on which the plaintiffs were to be evicted, claiming, inter alia, declarations that the plaintiffs are the lawful tenants of the premises and that 'the orders for possession made on 12 December 1985 and 13 August 1988 are not binding on the plaintiffs'. As to the latter, what the plaintiffs must be taken to be seeking is a declaration that neither writ of possession is enforceable against them.

On the same day, 15 September 1988, the plaintiffs applied by summons, ex parte, for an injunction restraining the defendants from carrying out the eviction 'of the occupants of No 75 Rowell Road, Singapore, pursuant to

the order of court made on 15 August 1988', by which the plaintiffs must be assumed to be referring to the second writ of possession. The affidavit in support of the ex parte application was sworn by the first plaintiff. The affidavit made no reference to what was undoubted fact, namely that the plaintiffs had had no notice of the mortgage action brought by the bank against Ngo Hock, and that they had had no opportunity to attend and, if thought fit, apply to be joined as defendants prior to the order for possession being made. However, Chan Sek Keong J, before whom the application for ex parte relief was heard, made the following note of the submission advanced by counsel for the plaintiffs:

> Defendants obtained order for possession against mortgagees, Ngo Hock Investments in OS 110/85. Plaintiffs were not a party to those proceedings. Order for possession not binding on plaintiffs. Plaintiffs were in possession as tenants since pre-war, before mortgage was created.

Clearly, therefore, in amplification of the grounds set out in the affidavit concerning their alleged right to protection under the Act, the plaintiffs were saying that they ought to have been given an opportunity to be heard in the mortgage action.

In the event, the learned judge granted the plaintiffs the injunction they sought. There are now two motions before me. By the first the plaintiffs seek a continuation of the injunction until trial of the action; by the second the defendants ask that the injunction be discharged. The same issues arise in both. They are:

(i) whether the plaintiffs ought to have been given notice of the mortgage action, in order to enable them to attend and, if thought fit, apply to be joined as defendants;

(ii) if yes, whether the bank's failure to give notice entitles the plaintiffs ipso facto to a continuation of their injunction; or whether it is appropriate, the plaintiffs now being before me, for this court to consider whether the injunction should be continued in view of the plaintiffs' claim to protection under the Act.

1 *Whether the plaintiffs ought to have been give notice of the mortgage action*

The mortgage action was brought under the provisions of O 83. That order applies, inter alia, to any action by a mortgagee in which there is a claim for 'delivery of possession ... to the mortgagee by the mortgagor or by any other person who is or is alleged to be in possession of the property.' Order 83 r 3(4) provides:

> Where the plaintiff claims delivery of possession, the affidavit must give particulars of every person who to the best of the plaintiff's knowledge is in possession of the mortgaged property.

In purported compliance with this rule, Linda Cheng, a legal officer of the bank, in her affidavit in support of the relief claimed in the mortgage action stated:

> To the best of my knowledge and belief, the mortgaged property is presently used as a warehouse for the storage of motor vehicle spare parts. There are no persons residing at the mortgaged property.

This statement, in the face of the evidence before me, was clearly wrong. The bank, as I have said, is incorporated in Hong Kong. There is nothing in the evidence to suggest that, at the material time, it had a place of business in Singapore. The funds advanced by the bank on the security of the mortgage were so advanced to Ngo Hock in Hong Kong. Linda Cheng was resident in Hong Kong. I conclude that no proper inquiry was made by the bank, or by its solicitors in Singapore, as to whether the premises were occupied and that, had inquiries been made, they would have disclosed the presence of a number of occupants on the premises, including the plaintiffs.

In my judgment, it is at least desirable if not incumbent upon a mortgagee plaintiff in a mortgage action, in order to give efficacy to O 83 r 3(4), to make due inquiry concerning the occupancy of the mortgaged premises. If there are occupants they must be given notice if a mortgage action is commenced, and they must be told in that notice that they may apply to be joined as defendants. If the occupants are identifiable the notice should be addressed and delivered to them; where the occupants cannot be identified the notice should be given by affixing it to a suitable part of the mortgaged property. In stipulating these measures, I am guided by the note to O 88 r 2-7/3 of the English RSC. The fact that notice has been given should be brought to the attention of the court in the affidavit filed in support of the claim for possessory relief by the mortgagee. These steps should enable a court, in making an order for possession against a mortgagor in default, to determine whether that order should be enforceable against occupants of the mortgaged property particularly, as is here the case, if the occupants claim protection under the provisions of the Act by virtue of tenancies which pre-existed the mortgage. The requirement of notice is consonant with the principle, long accepted in Singapore in disputes between landlord and tenant, that an occupier ought not to be affected by an order for possession unless he has had notice of it, and an opportunity of being heard - see *Tan Joo Eng* v *Siang Heng Co Ltd & Ors*.[1] Accordingly, I answer the first question in the affirmative.

2 *Whether the plaintiffs, not having been given notice of the mortgage action and an opportunity to be heard in that action, are ipso facto entitled to a continuation of the injunction; or whether the court should now consider the plaintiffs' claims to protection under the Act in determining whether the injunctive relief granted to the plaintiffs should continue until trial*

Counsel for the plaintiffs contended that, since the plaintiffs had not been given notice of the mortgage action, and

were accordingly deprived of the opportunity of being heard, I should continue the injunction without regard to the merits of the plaintiffs' assertion that they are protected by the provisions of the Act. The merits, said counsel, are for the court to determine at the trial. That submission is not acceptable. It is well settled that a plaintiff who claims interim injunctive relief must establish at the interim stage that there is a serious issue to be tried. Alternatively, counsel for the plaintiffs submitted that a serious issue had arisen as to whether the plaintiffs were entitled to protection under the Act. For his part, counsel for the bank urged that the ex parte injunction be discharged, on the grounds that the plaintiffs failed to make full disclosure when applying for the injunction ex parte; that they were guilty of unreasonable delay and that, in any event, they had failed to raise a serious issue to be tried.

As to non-disclosure, it is the case that until very recently the courts took an uncompromising view of the duty to make full and frank disclosure and tended to discharge injunctions obtained ex parte if the plaintiffs failed to discharge that duty, even if non-disclosure had been innocent. Thus in *Bank Mellat* v *Nikpour*,[2] Lord Denning MR said (at p 89):

> When an ex parte application is made for a Mareva injunction, it is of the first importance that the plaintiff should make full and frank disclosure of all material facts. He ought to state the nature of the case and his cause of action. Equally, in fairness to the defendant, the plaintiff ought to disclose, so far as he is able, any defence which the defendant has indicated in correspondence or elsewhere. It is only if such information is put fairly before the court that a Mareva injunction can properly be granted ...

Donaldson LJ (as he then was) said (at p 90):

> ... the court will be astute to ensure that a plaintiff who obtains an injunction without full disclosure - or any ex parte order without full disclosure - is deprived of any advantage he may have derived by that breach of duty ... The rule requiring full disclosure seems to me to be one of most fundamental importance, particularly in the context of the draconian remedy of the Mareva injunction. It is in effect, together with the Anton Piller order, one of the law's two 'nuclear' weapons. If access to such a weapon is obtained without the fullest and frankest disclosure, I have no doubt at all that it should be revoked.

In *Siporex Trade SA* v *Comdel Commodities Ltd*,[3] Bingham J stated (at p 437):

> The scope of the duty of disclosure of a party applying ex parte for injunctive relief is, in broad terms, agreed between the parties. Such an applicant must show the utmost good faith and disclose his case fully and fairly. He must, for the protection and information of the defendant, summarize his case and the evidence in support of it by an affidavit or affidavits sworn before or immediately after the application. He must identify the crucial points for and against the application, and not rely on general statements and the mere exhibiting of numerous documents. He must investigate the nature of the cause of action asserted and the facts relied on before applying and identify any likely defences. He must disclose all facts which reasonably could or would be taken into account by the judge in deciding whether to grant the application. It is no excuse for an applicant to say that he was not aware of the importance of matters he has omitted to state. If the duty of full and fair disclosure is not observed the court may discharge the injunction even if after full enquiry the view is taken that the order made was just and convenient and would probably have been made even if there had been full disclosure.

While continuing to uphold the importance of the principle of full and frank disclosure, the courts appear, since *Siporex*,[3] to have taken a somewhat more indulgent view of failure on the part of a plaintiff to make full disclosure. The process began in *Eastglen International Corp* v *Monpare SA*.[4] There the plaintiffs obtained a Mareva injunction on the basis of an affidavit which, due to default on the part of the plaintiffs' solicitor, omitted a material fact. The defendants applied to discharge the injunction, whereupon the plaintiffs discontinued the action, and went to fresh solicitors who began another action, in which a second injunction was sought and obtained, this time with an affidavit in support which made full disclosure and admitted the material non-disclosure in the first action. The defendants applied to discharge the second injunction because of the failure to disclose in the first action. In the event, the second injunction was continued because the default in the first action was wholly that of the solicitor.

The question arose, in *Lloyds Bowmaker Ltd* v *Britannia Arrow Holdings PLC*,[5] whether an ex parte injunction having been granted in the face of failure on the part of a plaintiff to make full disclosure the court, upon an application to discharge the injunction, had power to refuse to discharge it, or to grant a fresh injunction in similar terms, the non-disclosure having by then been made good. Dillon LJ said (at p 187):

> There is no doubt that there is jurisdiction to grant a fresh injunction, even though there has been culpable non-disclosure when the original injunction was applied for. I find it a cumbrous procedure that the court should be bound, instead of itself granting a fresh injunction, to discharge the existing injunction and stay the discharge until a fresh application is made, possibly in another court, and the court which is asked to discharge the injunction should not simply, as a matter of discretion in an appropriate case, refuse to discharge it if it feels that it would be appropriate to grant a fresh injunction. That leads me to think that there is a discretion in the court on an application for discharge.

In *Brink's-MAT Ltd* v *Elcombe & Ors*[6] Balcombe LJ stated (at pp 193-94):

> The rule that an ex parte injunction will be discharged if it was obtained without full disclosure has a twofold purpose. It will deprive the wrongdoer of an advantage improperly obtained: see *R* v *Kensington Income Tax Comrs, ex p Princess Edmond de Polignac* [1917] 1 KB 486 at 509. But it also serves as a deterrent to ensure that persons who make ex parte applications realize that they have this duty of disclosure and of the consequences (which may include a liability in costs) if

they fail in that duty. Nevertheless, this judge-made rule cannot be allowed itself to become an instrument of injustice. It is for this reason that there must be a discretion in the court to continue the injunction, or to grant a fresh injunction in its place, notwithstanding that there may have been non-disclosure when the original ex parte injunction was obtained: see in general *Bank Mellat* v *Nikpour* (1985) FSR 87 at 90 and *Lloyds Bowmaker Ltd* v *Britannia Arrow Holdings PLC (Lavens, third party)* [1988] 3 All ER 178, a recent decision of this court in which the authorities are fully reviewed. I make two comments on the exercise of this discretion:

(i) Whilst, having regard to the purpose of the rule, the discretion is one to be exercised sparingly, I would not wish to define or limit the circumstances in which it may be exercised.

(ii) I agree with the views of Dillon LJ in the *Lloyds Bowmaker* case [1988] 3 All ER 178 at 187 that, if there is jurisdiction to grant a fresh injunction, then there must also be a discretion to refuse, in an appropriate case, to discharge the original injunction.

So far as I am aware, the most recent wisdom on the effect of non-disclosure was expressed by Sir Nicolas Browne-Wilkinson VC in *Dormeuil Freres SA & Anor* v *Nicolian International (Textiles) Ltd.*[7] He states (at p 199):

I will deal first with the application to set aside the ex parte order. It is a basic principle, applicable to all ex parte applications, that a plaintiff seeking ex parte relief must make full disclosure to the court of all facts which are material to the exercise of the court's discretion whether or not to grant the relief. If such disclosure is not made by the plaintiff, the court may discharge the ex parte injunction on that ground alone. But if, in the circumstances existing when the matter comes before the court inter partes, justice requires an order either continuing the ex parte injunction or the grant of a fresh injunction, such an order can be made notwithstanding the earlier failure of the plaintiff to make such disclosure. Moreover, there is authority that, contrary to the law as it was originally laid down, there is no absolute right to have an ex parte order obtained without due disclosure set aside: there is a discretion in the court whether to do so or not.

There is not the slightest doubt that the first plaintiff failed to disclose material facts in his affidavit which led to the granting of the ex parte injunction on 16 September 1988. He omitted to disclose that he knew, as long ago as in April 1986, of the issue of the first writ of possession. He failed to state that he, and the other plaintiffs, were then represented by solicitors, and that representations had previously been made to the bank on their behalf by a Member of Parliament, who had asked for 'a grace period' in order to enable the plaintiffs to secure alternative accommodation. Other correspondence addressed to the plaintiffs, and to their solicitors, was not exhibited. These were very important omissions, and they ought not to have occurred. But I apprehend, nevertheless, that I have the power in my discretion to continue the injunction, if that is the course which justice requires. These plaintiffs live, cheek by jowl, in an old pre-war shophouse. It is a fair inference that they are poorly off. It is sought to evict them. The affidavit filed in support of the summons for ex parte relief bore all the signs of having been hurriedly settled. It was sworn on the day that eviction of the plaintiffs was to have been carried out. It was settled by a very junior solicitor. A lot of material that ought to have been included was left out. The courts would place themselves in an invidious position if, in every instance of an application to continue or discharge an interim injunction, they set out to consider the quality of the service the plaintiffs received from their advisers. But the court took cognisance of a solicitor's mistake in the *Eastglen* case,[4] and I consider that I am entitled to take into account the circumstances which surrounded the preparation of the first plaintiff's earliest affidavit. It was settled on behalf of plaintiffs wholly unschooled in determining what material they should make available to an inexperienced solicitor who, incidentally, was not representing them when they learned of the issue of the first writ of possession in 1986.

As regards the assertion that the plaintiffs were guilty of unreasonable delay in coming to the court for an injunction, it is true that the first writ of possession was issued in December 1985, and that the plaintiffs first learned of it in or about March 1986. However, their then solicitors were told that the claim to protection under the Act would be investigated, and that in the meanwhile the bank would not move to evict the plaintiffs. The matter then went to sleep for two years, and was not revived until mid-1988. The merits of the bank's claim for possession were then debated between its solicitors and the plaintiffs' solicitors, and it was not until 1 September 1988 that the plaintiffs were told that the second writ of possession would be executed on 15 September 1988. I do not think that, in all the circumstances, they can be said to have moved too slowly, or that the application ought necessarily to have been made inter partes. I hold that, although the plaintiffs are not entitled ipso facto to a continuation of the ex parte injunction in view of the bank's failure to give the plaintiffs' notice of the mortgage action, it is expedient that I should now determine whether the injunction should continue or be discharged.

Only the first plaintiff has sworn affidavits in support of the claim for an injunction, and for its continuation. His affidavit at the ex parte stage was vague and imprecise. His age was not stated. He claimed that his father, Ali bin Dollah, was a tenant of the premises, under an oral tenancy agreement since before the war, and that the premises are caught by the provisions of the Act. A birth certificate in evidence establishes that the first plaintiff's sister, Hawiah binte Ali, was born on the premises on 20 August 1943. Following his father's death (the date of which was not stated) the first plaintiff continued in occupation of the premises, paying rent at the rate of $41.95 per month to a succession of landlords, namely Jabar Harharah Badib Co, Lim Beng Ee and Ngo Hock. Rent receipts were exhibited which were made out in favour of 'Hassan'. The

first plaintiff explained that Hassan was his late father's cousin, and that Hassan was named in the receipts because he was the head of the family, and not because he was the tenant. According to the first plaintiff, rent ceased to be paid in or about March 1986 because he was orally informed by the official assignee's office not to pay rent to Ngo Hock as a writ of possession had been obtained against Ngo Hock by the bank.

The result of a land titles search, which was in evidence before me, shows that in 1917 the trustees of the will of Shaik Aboobakar bin Mohamed Lajam deceased became the owners of the premises. One of these trustees was Shaik Bakar bin Abdullah bin Mohamed Jabbar. By an order of court made in July 1928 title to the premises was vested in Shaik Hussain bin Aboobakar Lajam, had remained in him until the premises were conveyed, in October 1972, to Lim Beng Ee. Lim appears to have died in or about 1975. In 1982 his personal representatives conveyed the premises to Ngo Hock, who in due course granted a mortgage over the property to the bank. Although Jabar Harharah Badib Co does not feature in the land titles search, it is evident that during the period 1917 to 1972 the premises were Muslim-owned, and it is by no means improbable that Jabar Harharah Badib Co collected rents and issued receipts on behalf of the owner. There is evidence that the individual to whom the rents were tendered 'since pre-war days' was a certain S Abdul Rahman Abdullah Jabar. In the result, there is unrebutted evidence which establishes that the first plaintiff's father lived on the premises before the war; that his sister was born on the premises during the war; that rent was paid to a Muslim landlord up to 1972; and that it was paid thereafter to Lim Beng Ee and finally to Ngo Hock. Furthermore, it is not seriously disputed that the premises are caught by the provisions of the Act. That, in my judgment, renders the question as to whether the first plaintiff, as a member of the family of his late father, Ali bin Dollah, is entitled to the protection of the Act, a serious issue to be tried.

I am unable to say the same about the claim to protection under the Act on the part of the second, third and fourth plaintiffs. Nowhere is a relationship between any of them and the first plaintiff's father, or the first plaintiff himself, claimed beyond the statement in the Member of Parliament's letter to the effect that they are 'all family members'. Although it is said on behalf of the second, third and fourth plaintiffs that each of them was a tenant of the premises entitled to separate statutory protection, it is clear from the time records of rental payments become available that there was a single payment of the monthly rental, in respect of which one receipt was issued. Nowhere does the name of any of the second, third or fourth plaintiffs appear in any document relating to the premises. Accordingly, the second, third and fourth plaintiffs have failed to persuade me that a serious issue has arisen as to whether they are entitled to protection under the Act.

In view of my conclusions there will be the following orders:

(i) as to the plaintiffs' motion to continue the injunction, I order that a modified injunction do continue until trial or further order, the modification being that the defendants be restrained from causing or procuring the eviction from no 75 Rowell Road of the first plaintiff, his spouse or spouses and children;

(ii) as to the defendants' motion for the injunction to be discharged, I order that it be so discharged to the extent only that it applies to the second, third and fourth plaintiffs, but subject to the discharge not becoming operative until 1 October 1989 in order to enable the second, third and fourth plaintiffs and their families to obtain alternative accommodation;

(iii) there will be no order for an inquiry as to damages as against the second, third and fourth plaintiffs, and no order for costs against those plaintiffs; and

(iv) costs as between the first plaintiff and the defendants will be in the cause.

Order accordingly.

Solicitors: *Tang & Co; M Jiffry & Co.*

Reported by *Terence Tan Bian Chye*

Public Prosecutor v Teo Heng Chye

HIGH COURT (SINGAPORE) - CRIMINAL CASE NO 23 OF 1986
COOMARASWAMY AND AP RAJAH JJ
15 JUNE 1989

Criminal Law - Murder - Defence of intoxication - Penal Code (Cap 224, 1985 Ed), ss 85(2), 302 & 304(b) - Criminal Procedure Code (Cap 68, 1985 Ed), ss 17, 18 & 170(1)

Criminal Procedure - Sentencing - Culpable homicide not amounting to murder - Factors to be considered in sentencing - Consecutive or concurrent sentences - Factors to be considered - Penal Code, s 71, illus (a) & (b)

The accused was charged with murdering two persons in a fight. The evidence showed that he was intoxicated at the time of the killings and he was armed with a bearing scraper.

Held, finding the accused guilty of culpable homicide not amounting to murder:

(1) Although the accused was under the influence of alcohol, his level of intoxication was not sufficient to constitute a defence to the charges. However, the level was sufficient to warrant it being taken into account for the purpose of determining whether the accused had formed any intention, specific or otherwise.